

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	}	
UNITED STATES OF AMERICA	}	
	}	
V.	}	CRIMINAL ACTION
	}	NO. 04-10235-MLW
CORY HUBBARD	}	
DEFENDANT	}	
_____	}	

**DEFENDANT’S MOTION IN LIMINE TO EXCLUDE 404(b) EVIDENCE**

The Defendant, Cory Hubbard, hereby seeks a ruling from this court in limine that evidence the government seeks to introduce, specifically convictions for narcotic offenses that occurred in the New Bedford District Court in 1998, be excluded. These convictions are for possessions of controlled substances with the intent to distribute.

In order to be deemed admissible by this court, the First Circuit has recognized a two-step process for determining the admissibility under 404(b). First the Court must determine whether the evidence offered is probative of a material issue other than character. If the evidence does have relevance, the Court must conduct an analysis under Fed. R. Evid. 403 to determine whether the probative value of the proffered evidence is “substantially outweighed by the danger of unfair prejudice.” *See United States v. Frankhauser*, 80 F.3d 641, (1<sup>st</sup> Cir. 1996); *United States v. Williams*, 985 F.2d 634 (1<sup>st</sup> Cir. 1993); *United States v. Mazza*, 792 F.2d 1210 (1<sup>st</sup> Cir. 1986).

The Government will seek to introduce evidence that the Defendant was convicted in the New Bedford District Court in 1998 for possession with intent to

distribute controlled substances. Despite how the Government couches its argument - for example, that the introduction of these prior offenses are probative of the Defendant's knowledge and intent - such evidence would undoubtedly suggest that the Defendant was a person of bad character. Further, these prior offenses occurred approximately six years prior to the charges against him in this indictment. Hence, the facts in this case have no proximity in time or place to the instant charges and are clearly not part of any pattern of illegal activity. In addition, the evidence sought to be introduced by the government would be overwhelmingly prejudicial to the Defendant and any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and would have a tendency to mislead the jury. *United States v. Garcia-Rosa*, 876 F.2d 209 (1<sup>st</sup>. Cir 1989).

The facts of this case, as described by the Government in its Trial Memorandum, are fairly straightforward. The introduction of evidence such as what the Government seeks will likely cause a complicated trial and one that will unduly cause much confusion in the minds of the jurors.

WHEREFORE, the Defendant asks this Court to exclude this evidence as violative of Rule 404(b), 403 and the rights afforded him under the 5<sup>th</sup> Amendment to the United States Constitution.

Respectfully submitted,  
Cory Hubbard,  
By his attorney,

/s/ Frank D. Camera

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Date: February 24, 2006

CERTIFICATE OF SERVICE

I Frank D. Camera hereby certify that I have served a copy of this motion to all parties of record, via electronic filing, on this 24<sup>th</sup> day of February 2006.

/s/ Frank D. Camera